SARASOTA COUNTY SHERIFF'S OFFICE

Administrative Investigation **I.A. #** 2017-004

Event Location: Sarasota County

Event Date: 1/12/2017 Event Time: 900 Hours

Date Reported: 1/26/2017 Received By: Lt. Mercurio

☒ Attached additional pages as necessary

Alleged Disciplinary Standard Violation: (Under G.O. 12.2 List Specific Disciplinary Standard Violation)
D.S. # 1 Conduct Unbecoming, # 9 Conformance w/Laws (2 counts), # 10 Moral Character, # 58 Untruthfulness

COMPLAINANT

Name: Colonel Hoffman DOB: _____ Sex _____ Home Phone: ( )

Address: 2071 Ringling Blvd Sarasota, FL 34230 Business Phone: (941) 861-5800

WITNESS(ES)

Name: *** See List *** Address: _____ Phone ( )

Name: _____ Address: _____ Phone ( )

Name: _____ Address: _____ Phone ( )

EMPLOYEE(S) INVOLVED

Name: Dep. C. Plank I.D.# 2983 Unit: Patrol

Name: _____ I.D.# _____ Unit: _____

Name: _____ I.D.# _____ Unit: _____

NATURE OF COMPLAINT ☐ Excessive Force ☐ False Arrest ☐ Discrimination ☒ Criminal Conduct
☒ Other (specify) Conduct Unbecoming, Moral Character, Untruthfulness

INVESTIGATIVE SUMMARY (Findings) **Investigator:** Sgt. R. Reilly # 601

****** See Investigative Report ******

Investigator's Signature: Sgt. R. Reilly #601 **Date Completed:** 5/17/2017

I, the above signed investigator, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of this investigation of any of the rights contained in Florida State Statute 112.532 and 112.533.

DISPOSITION ☒ Sustained ☒ Not Sustained ☐ Unfounded ☐ Exonerated ☐ Policy Failure ☒ Other Misconduct D.S. # 59

CHARACTER OF DISCIPLINE

☐ None ☐ Memorandum of Counseling ☐ Reprimand
☐ Suspended – Hours ☐ Probation - Length ☑ Dismissal
☐ Additional ☐ Reduction in Pay ☐ Demotion

Employee's signature: _____ Date: 5/17/17

(Employee signature is not an admission but acknowledgement that the form was reviewed)

(Case is not finalized until approved by the Sheriff)

Employee notified by (signature) MAJ. Rydyard #464 Date: 5-17-17

Bureau Commander's/Chairman's (signature) Capt. #10 Date: 5.17.17

Sheriff's endorsement (signature) _____ Date: 5-24-17

DISPOSITION LETTER SENT TO COMPLAINANT, BY INTERNAL AFFAIRS, ON _____
DATE

Forward original, all supporting documents and recordings to Internal Affairs

SARASOTA COUNTY SHERIFF'S OFFICE

Administrative Investigation
Supplement

IA Case #: 2017-004

On 1/19/2017, an administrative investigation was initiated into the conduct of SSO Dep. Carson Plank regarding her involvement in a criminal investigation (SSO C# 17-3077). Deputy Plank was the initial responding deputy to an attempted murder scene on 1/12/2017, wherein former SSO Dep. Frank Bybee was the alleged suspect.

On 1/13/2017, Dep Plank was interviewed by SSO Det. C. Gaeta and Sgt. Shurtleff as part of their felony investigation into the alleged crime. Dep. Plank provided a sworn videotaped statement regarding her actions upon her arrival at the crime scene. Dep. Plank provided testimony that she had not had any contact with the suspect (Bybee) since a phone conversation they had on 12/20/2016. Dep. Plank also gave testimony that she did not see anything at the scene that led her to believe the alleged crime had occurred. Refer to recorded interview with detectives for further details.

After the initial sworn interview with Dep. Plank on 1/13/2017, detectives learned through obtained phone records that there had in fact been contact between Dep. Plank and the suspect (Bybee) to wit: a series of phone calls and text messages between Dep. Plank and the suspect (Bybee) after 12/20/2016, although the content of the text messages had been deleted. Refer to attached phone records.

On 1/19/2017, Dep. Plank was interviewed for a second time by the detectives and asked specifically about the truthfulness of her first interview. Dep. Plank admitted that she had not been truthful and that she has had significant and material conversations with the suspect (Bybee) regarding the ongoing criminal investigation. Dep. Plank also disclosed to the detectives that while on scene she had photographed a blood droplet that also contained a possible human hair; however she failed to properly document the photo as is required by her training and agency policy. Based on the totality of information provided by Dep. Plank, detectives were able to secure an arrest warrant charging Dep. Plank with providing false information to L.E.O. during a felony investigation. Refer to second recorded interview with detectives for further details as well as the witness statements from detectives that I obtained during this investigation.

It should be noted that former Dep. Frank Bybee was arrested on 1/23/2017 after detectives developed probable cause and secured arrest warrants on the following charges: Attempted Murder, Battery of Victim 65 years of age or Older, Burglary of an Occupied Dwelling, Exploitation of the Elderly, Grand Theft (2 counts), Forgery and Petit Theft.

During the course of this investigation, I was made aware that SSO Det. J. Klay was able to recover a series of text messages between Dep. Plank and former Dep. Frank Bybee (suspect) during the morning of the attempted murder investigation on 1/12/2017. The texts revealed the fact that Dep. Plank was informing the suspect (Bybee) that she was on the way to the call and what was being alleged on the dispatch screen as well as information from the victim. The text messages also show that Dep. Plank was continually updating the suspect (Bybee) as to the course of action that was being taken by the SSO during the on scene investigation.

Dep. Plank makes several references in the text messages that she was going to "take care of it" for the suspect (Bybee) and "squash it" in regards to the allegations of attempted murder. Dep. Plank goes on to inform the suspect (Bybee) of the evidence she observed while on the scene to include sending the suspect (Bybee) the photo that she secured of the blood droplet that contained a possible human hair. The text messages also revealed that Dep. Plank provided the suspect (Bybee) with the names of the two investigators that had interviewed her along with the details of what was discussed, despite being told by the investigators not to discuss the contents of the interview.

On 5/4/2017, detectives obtained a second arrest warrant for Dep. Plank this time charging her with Tampering w/ Physical Evidence. Detailed in the affidavit is the fact that Dep. Plank purposely concealed physical evidence (blood and hair photo) in an attempt to mislead detectives while knowing that a criminal investigation was being conducted which ultimately impeded detectives' ability to review and analyze this piece of evidence. Refer to probable cause affidavit for further details.

On 5/15/2017, I obtained a sworn audio recorded statement from Dep. Carson Plank after she and her legal counsel reviewed the appropriate IA paperwork and information from the case file. Dep. Plank gave testimony that she does not feel that she was intentionally untruthful to any member of this agency regarding the criminal investigation and her contact with the suspect (Bybee). Dep. Plank stated that although she was being questioned as a witness by CIS detectives, she felt that this was nothing more than a "suspicious incident" and that it was not a criminal investigation.

Throughout her statement, Dep. Plank continued to give disingenuous testimony regarding her course of conduct as it relates to both the administrative and criminal investigation involving former Deputy Frank Bybee. Dep Plank stated that she felt her conduct as an agency member was acceptable due to the fact that she possessed a lack of knowledge regarding "administrative leave" and "criminal investigations." Dep. Plank stated that in hindsight she would have taken a different course of action during the investigation to include not contacting and providing information to the suspect (Bybee) of an attempted murder investigation.

Dep. Plank's self-proclaimed naiveté with regards to agency policy and criminal investigation does not preclude her from performing her duties as an agency member and trained law enforcement officer in a reasonable, prudent and ethical manner. Dep. Plank is an educated individual (Bachelor's degree in Criminology from USF) with over a thousand (1000) hours of specific law enforcement training. It is incomprehensible to believe that she could not decipher the difference between right and wrong during this incident.

As a result of this investigation which includes the review of all pertinent documents and videos as well as witness testimony and subject deputy testimony, there is enough information to sustain the following agency disciplinary standards:

Conduct Unbecoming which reads" Members shall not engage in any conduct that is likely to adversely affect the discipline, good order or reputation of the sheriff's office, even though such conduct is not specifically set forth in these directives. This includes conduct both on and off duty hours. Conduct unbecoming shall include that conduct which brings the sheriff's office into disrepute, reflects discredit upon personnel as members of the sheriff's office, that suggests dishonesty that does not materially impair the objectives of the agency, or otherwise any conduct that impairs the operation or the efficiency of the agency. Dep. Plank's overall course of conduct with regards to concealing a potential evidentiary photo from a crime scene as well as providing sensitive law enforcement information to the suspect (Bybee) of a criminal investigation clearly violates this standard.

Conformance w/ Laws (2 counts) which reads "members shall comply with all laws, ordinances, statutes and rules provided the state or federal law and follow all mandates guaranteed by the constitution of the United States and the state of Florida, or any of their subdivisions. Dep. Plank violated this standard when she was arrested and charged with two (2) separate crimes violating both F.S.S. 918.13 and 837.055 (1). Refer to attached probable cause affidavits for further details.

Untruthfulness in an Official Proceeding "Members shall speak truthfully in all official proceedings, including but not limited to, criminal or civil court proceedings, depositions, administrative hearings and administrative investigations. Dep. Plank violated this provision by providing false information to agency detectives during a sworn videotaped interview.

With regards to the allegation of D.S. # 10 Moral Character, while deemed not sustained the elements of the standard were violated but are inclusive of two of the aforementioned standards of Conduct Unbecoming and Untruthfulness in an Official Proceeding.

This concludes the investigation for IA C# 2017-004.

SARASOTA COUNTY SHERIFF'S OFFICE

Administrative Investigation
Supplement

IA Case #: 2017-004

Witness List

1. Sgt. J. Allen # 1611
2. Det. C. Gaeta # 1370
3. Det. M. Lefebvre # 2141
4. Det. J. Klay # 1145

SARASOTA COUNTY SHERIFF'S OFFICE

MEMORANDUM

HAND DELIVERY

TO: Dep. Carson Plank # 2983 **DATE:** May 17, 2017

FROM: Major Paul Richard

SUBJECT: Proposed Disciplinary Action

Pursuant to General Order 12.1, this memorandum is to officially notify you that the Sarasota County Sheriff's Office is proposing to terminate your employment for violating the following agency disciplinary standard which is made part of the Sarasota County Sheriff's Office General Orders:

General Order 12.2 (III) D.S. # 1 Conduct Unbecoming (IA# 2017-004)
9 Conformance with Laws (2 Counts, IA # 2017-004)
59 Untruthfulness/ Official Proceeding (IA # 2017-004)

The effective date of this action will not be until after the pre-disciplinary conference, if requested, is held and a Final Action letter is provided to you. This proposed action is based upon the following:

IDENTIFICATION OF DOCUMENTS

Among, but not limited to the documents relied upon by the Sheriff's Office in proposing this disciplinary action is:

1. IA Case # 2017-004 (Conduct Unbecoming)
2. IA Case # 2017-004 (Conformance with Laws-2 Counts)
3. IA Case # 2017-004 (Untruthfulness in an Official Proceeding)

CONCLUSION

The Sheriff's Office holds its employees to a high standard of conduct and behavior both on and off-duty. You have violated these standards. Your actions and behavior have demonstrated conduct which has a tendency to destroy public respect and confidence in the agency, in its employees, and in the operation of its services and has adversely affected the good order and discipline of this Agency. Based on the factual allegations, the Sheriff and your supervisors agree that termination of your employment is the appropriate action in your case.

PRE-DISCIPLINARY CONFERENCE

You may within three (3) working days of receipt of this notice submit a request, in writing, to the below listed hearing officer, for a pre-disciplinary conference. The purpose of this conference is to make an oral and / or written statement, to the Sheriff's Office to refute or explain the charges made against you. The Pre-Disciplinary Conference is not mandatory and may be waived, to proceed to Final Discipline, which may include a Career Service Board (when applicable and if requested). The aforementioned request must be hand delivered to the below listed hearing officer or the hearing officer's administrative assistant, within the allotted time (three [3] working days). No exceptions or deviations from the listed instructions will be tolerated. The conference will be informal and will not be in the nature of an evidentiary hearing. If you desire such a conference, please deliver your written request to:

Captain Brian Meinberg
Administrative Assistant Mary Lang
Sarasota County Sheriff's Office
Post Office Box 4115
Sarasota, Florida 34230-4115

The conference will be held at a time and place determined by the Sheriff's Office, during regular business hours. If you choose not to make such a request, the Sheriff's Office will proceed to finalize the proposed disciplinary action.

If you have any questions concerning this matter, please feel free to contact me.

Delivered By: MAJ. RICHARD Date: 5-17-17

Employee's Signature
Acknowledging Receipt: Date: 5/17/17

Witnessed By: CAPT #10 Date: 5.17.17

NOTE TO THE EMPLOYEE: The signing of this memorandum does not indicate that you are admitting to any charges. By signing, you are only acknowledging that you have received notification of the proposed disciplinary action and your right to a predetermination conference.

NOTE TO THE DELIVERER: If the employee refuses to sign, you shall so indicate on this memorandum their refusal to do so.

xc: personnel file

WAIVER OF PRE-DISCIPLINARY CONFERENCE

I, Dep. Carson Plank # 2983, have received and read the Notice of Proposed Disciplinary Action dated May 17th ,2017 (IA CASE # 2017-004), I understand that I have the right to a pre-disciplinary conference in order to make an oral or written statement, or both to the Sheriff's Office to refute or explain the charges made against me.

I have determined that I do not want to request a pre-disciplinary conference and I am requesting that the proposed discipline be the final discipline effective immediately. I have not been coerced or promised anything for signing this waiver. I have determined that this is in my best interest and I am signing voluntarily and of my own free will.

This waiver in no way effects or alters my ability to appeal said disciplinary action to the Career Service Board, if applicable. Additionally, it does not affect any other rights, in law or equity, that I may have relating to this action.

Dated this _____ day of _____, 2017.

DECLINED

_____ _____

Witness Signature of Member ID#

THE LAW OFFICE OF
ANDREA FLYNN MOGENSEN, P.A.
200 SOUTH WASHINGTON BOULEVARD - SUITE 7 - SARASOTA, FLORIDA 34236

TELEPHONE: 941-955-1066 ANDREA@SARASOTACRIMINALLAWYER.COM FACSIMILE: 941-866-7323

May 18, 2017

Captain Brian Meinberg
Administrative Assistant Mary Lang
Sarasota County Sheriff's Office
PO Box 4115
Sarasota FL 34230-4115

RE: Pre-Disciplinary Conference Request for Deputy Carson Plank

Dear Captain Meinberg:

I represent Deputy Carson Plank. Pursuant to the attached notice, this correspondence is to request that a Pre-Disciplinary Conference be held in IA Case Number 2017-004. Because the exercise of this right is dependent upon strict compliance with the three day notice, please confirm receipt of this request via email correspondence to Andrea@SarasotaCriminalLawyer.com.

Sincerely,

Andrea Flynn Mogensen, Esq.

COPY

PRE-DISCIPLINARY CONFERENCE

You may within three (3) working days of receipt of this notice submit a request, in writing, to the below listed hearing officer, for a pre-disciplinary conference. The purpose of this conference is to make an oral and / or written statement, to the Sheriff's Office to refute or explain the charges made against you. The Pre-Disciplinary Conference is not mandatory and may be waived, to proceed to Final Discipline, which may include a Career Service Board (when applicable and if requested). The aforementioned request must be hand delivered to the below listed hearing officer or the hearing officer's administrative assistant, within the allotted time (three [3] working days). No exceptions or deviations from the listed instructions will be tolerated. The conference will be informal and will not be in the nature of an evidentiary hearing. If you desire such a conference, please deliver your written request to:

Captain Brian Meinberg
Administrative Assistant Mary Lang
Sarasota County Sheriff's Office
Post Office Box 4115
Sarasota, Florida 34230-4115

The conference will be held at a time and place determined by the Sheriff's Office, during regular business hours. If you choose not to make such a request, the Sheriff's Office will proceed to finalize the proposed disciplinary action.

If you have any questions concerning this matter, please feel free to contact me.

Delivered By: MAJ. RICHARD BHH Date: 5-17-17

Employee's Signature
Acknowledging Receipt: Date: 5/17/17

Witnessed By: CAPT #10 Date: 5.17.17

NOTE TO THE EMPLOYEE: The signing of this memorandum does not indicate that you ~~are admitting to any charges. By signing, you are only acknowledging that you have received~~ notification of the proposed disciplinary action and your right to a predetermination conference.

NOTE TO THE DELIVERER: If the employee refuses to sign, you shall so indicate on this memorandum their refusal to do so.

xc: personnel file

SARASOTA COUNTY SHERIFF'S OFFICE

MEMORANDUM

To: Major Paul Richard **Date:** May 24, 2017

From: Captain Meinberg

Subject: Deputy Carson Plank Pre-Disciplinary Conference

On May 23, 2017 at 1258 hrs I conducted a pre-disciplinary hearing for Deputy Carson Plank #2983, ref. IA case number 2017-004. In attendance were Deputy Carson Plank and her attorney Andrea Mogenson.
Throughout the conference Deputy Plank disputed specific sections as written in the administrative investigation. The following is a summation of her remarks:

- Deputy Plank denied she previously stated to investigators that she did not have contact with former Deputy Frank ByBee.
- Deputy Plank denied she made any untruthful statements to detectives on 1/13/2017.
- Deputy Plank affirmed she took a photograph of the blood droplet and possible human hair, but did not properly document the photo as is required by training and agency policy, stating, "It went out of my mind".
- Deputy Plank stated when texting Bybee that she was going to "squash it", she was in fact referring to Sgt. Jonathan Allen #1611 and all other responding deputies because they felt no crime was committed. She felt the statements of the victim were "conflicting" and "unbelievable".
- Deputy Plank refuted the finding that she purposely concealed physical evidence. She stated, "I don't know how they can say that I purposely concealed physical evidence because I never admitted to purposely concealing physical evidence;" and that Forensics was able to retrieve the evidence.
- Deputy Plank stated when told not to contact Bybee, she believed Sgt. Allen was referring only to working hours and was acceptable to do so when she returned home upon shift completion.
- Deputy Plank stated she has "been arrested two times for statements (she) didn't say".
- Deputy was unaware of agency protocol "for CIS to follow-up" when the suspect was on administrative leave or involved a law enforcement officer, "but kinda get(s) it now".
- Deputy Plank stated if she was going to hide evidence she would have not taken a picture of it on her work phone.

After conducting a thorough review of Deputy Plank's recorded statement and the administrative investigation supplement, I have determined that no new, additional, or significant information was presented which would affect the agency's prior decision of disciplinary action.

SARASOTA COUNTY SHERIFF'S OFFICE

MEMORANDUM

HAND DELIVERY

TO: Dep. Carson Plank # 2983 DATE: May 24, 2017

FROM: Major Paul Richard

SUBJECT: Final Disciplinary Action

This memorandum is to officially notify you of the decision to make the proposed action of termination, the final action. This final action is based on your violating the following agency disciplinary standards, which is made part of the Sarasota County Sheriff's Office General Orders:

General Order 12.2 (III) D.S. # 1 Conduct Unbecoming (IA C# 2017-004)
9 Conformance with Laws-2 Counts (IA # 2017-004)
59 Untruthfulness/Official Proceeding (IA # 2017-004)

The effective date of this final action will be upon service of this memorandum on 5/24/2017. The decision to uphold the proposed action of termination was made after careful consideration by the Sheriff and your supervisors taking into account the information you provided during your pre-disciplinary conference held on 5/23/2017.

The Sheriff's Office holds its employees to a high standard of conduct and behavior. You have violated these standards. Your actions and behavior have demonstrated conduct, which has a tendency to destroy public respect and confidence in the agency, in its employees, and in the operation of its services and has adversely affected the good order and discipline of this Agency.

As a permanent status employee with the Sarasota County Sheriff's Office, you have the right to appeal this disciplinary action to a Career Service Appeals Board in accordance with General Order 10.5. Any such appeal request must be in writing and must be received by the Sheriff no later than three working days after you are notified of the action on which the appeal is based. The Board will be selected and will meet for purpose of hearing the appeal no later than fifteen working days after receipt of your request. If you desire such a hearing, please deliver your written request to:

Sheriff Thomas Knight
Sarasota County Sheriff's Office
Post Office Box 4115
Sarasota, Florida 34230-4115

If you have any questions concerning this matter, please feel free to contact me.

Delivered By: MAS RICHARD #104 Date: 5-24-17

Employee's Signature
Acknowledging Receipt: [signature] Date: 5/24/17

Witnessed By: CAPT. [signature] #10 Date: 5.24.17

NOTE TO THE EMPLOYEE: The signing of this memorandum does not indicate that you are admitting to any charges. By signing, you are only acknowledging that you have received notification of the Final Disciplinary Action.

NOTE TO THE DELIVERER: If the employee refuses to sign, you shall so indicate on this memorandum their refusal to do so.

WAIVER OF CAREER SERVICE APPEALS BOARD

I, Dep. C. Plank # 2983, have received and read the Notice of Final Disciplinary Action dated 5/24/2017, IA# 2017-004. I understand that I have the right to a Career Service Appeals Board in order to appeal the Sarasota County Sheriff's Office Final Disciplinary Action issued against me.

I have determined that I do not want to request a Career Service Appeals Board. I have not been coerced or promised anything for signing this waiver. I have determined that this is in my best interest and I am signing voluntarily and of my own free will.

This waiver of a Career Service Appeals Board does not effect any other rights, in law or equity, that I may have relating to this action.

Dated this _____ day of _____, 2017.

_____ DECLINED

Witness Signature of Member ID#